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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/789,730	02/27/2004	Joyce M. Mohr	23-0697	8387
40158	7590	07/13/2006	EXAMINER	
WOODS FULLER SHULTZ & SMITH P.C. ATTN: JEFFREY A. PROEHL P.O. BOX 5027 SIOUX FALLS, SD 57117			KING, ANITA M	
			ART UNIT	PAPER NUMBER
				3632

DATE MAILED: 07/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/789,730	MOHR, JOYCE M.
	Examiner Anita M. King	Art Unit 3632

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 25 April 2006.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1,5-7,9 and 10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1,5-7,9 and 10 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____.
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____.

This is the second office action for application number 10/789,730, Implement Retaining Device, filed on February 27, 2004.

Cancellation of Claims

Claims 2-4 and 8 have been canceled per applicant's request.

Specification

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: a loop having a pair of opposite extents, each of the opposite extents of said loop united to said base portion, in claims 9 and 10.

Claim Objections

Claims 1, 5 and 10 are objected to because of the following informalities: in claim 1, line 4, "being" (first occurrence) should be deleted; and the limitations in lines 4-7 of claim 5, and lines 2-6 of claim 10, i.e., "said retention portion extending outwardly from said base portion such that said retention portion is adapted for inhibiting the writing implements from rolling off said base portion when the writing implements are positioned on said body member" is redundant, this limitation was previously cited in lines 11-15 of claim 1. Appropriate correction is required.

Claim Rejections - 35 USC § 112

Claims 1, 5-7, 9, and 10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 has ambiguous claim terminology where it is unclear whether latter recitations of originally cited terminology are intended to refer to the originally cited terms. It is unclear if "a base portion" in line 10 of the claim is intended to refer to the original recitation of the term "a portion" in line 5 of the claim.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1, 5-7, 9 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 5,572,941 to Arnos in view of U.S. Patent 5,725,189 to Landy. Arnos discloses a retaining device (Fig. 2) capable of inhibiting writing implements from rolling away from a user, the device comprising: a body member including a base portion (44) for positioning under an object (10) and a retention portion (46) coupled to and extending outwardly from the base portion; wherein the base portion comprises a free end positioned opposite of the retention portion for being inserted between the object and the support surface such that the base portions is retained in a desired position by the weight of the object; the retention portion of the body member having a width greater than a width of the base portion; wherein the

retention portion comprises an arcuate exterior surface, the arcuate exterior surface being adapted for providing a smooth surface; the arcuate exterior surface forming a teardrop shape, wherein the retention portion comprises a narrow end representing the narrow portion of the teardrop shape such that the narrow end is coupled to the base portion, the teardrop shape of the retention portion providing a gradual incline; and wherein the retention portion comprises a loop having a pair of opposite extents, each of the opposite extents of the loop being united to the base portion.

Arnos discloses the claimed invention except for the limitation of the base portion tapering in thickness from the retention portion to the free end of the base portion such that the base portion is substantially wedge shaped for facilitating sliding of the base portion under the object. Landy teaches a device having a base portion (160) for positioning under a object (110) and a retention portion (180), and wherein the base portion tapers in thickness from the retention portion to the free end of the base portion such that the base portion is substantially wedge shaped. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the base portion in Arnos to have included the wedge shape as taught by Landy for the purpose of creating an angle of the device relative to the support surface to provide a tilt angle for the object supported by the base portion.

Response to Arguments

Applicant's arguments, see remarks, filed April 25, 2006, with respect to the rejection(s) of claim(s) 1 and 5-7 under 35 U.S.C. 102(b) and 103(a) have been fully

considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Arnos.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anita M. King whose telephone number is (571) 272-6817. The examiner can normally be reached on Monday-Thursday.

The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Anita M. King
Primary Examiner
Art Unit 3632

July 9, 2006